

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION

IN RE:

ROBERT B. WOROBEK

CASE NO.: 17-10189-KKS  
CHAPTER 13

Debtor.

ORDER DENYING AMEND [SIC] DEBTOR'S VERIFIED  
MOTION FOR RECONSIDERATION RELIEF FROM ORDER  
GRANTING TRUSTEE'S MOTION TO DISMISS CASE AND  
CLARIFICATION AND REOPEN THE CASE, AS AMENDED  
AND SUPPLEMENTED (DOCS. 181, 182)

THIS MATTER is before the Court on the pleading entitled *Amend [sic] Debtor's Verified Motion for Reconsideration Relief from Order Granting Trustee's Motion to Dismiss Case and Clarification and Reopen the Case*, and amendments and supplements, filed by former Debtor, Robert B. Worobec ("Reconsideration Motion," Docs. 181 & 182). Having reviewed the Reconsideration Motion, the Chapter 13 Trustee's response, and the objections filed by Richard III, LLC and County of Volusia,<sup>1</sup> in light of relevant case law and applicable portions of the Bankruptcy Code and Rules, the Reconsideration Motion is due to be denied for the reasons set forth below.

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<sup>1</sup> Docs. 178, 183, and 186.

## BACKGROUND

Former Debtor is no stranger to the bankruptcy system, having been a debtor in six (6) bankruptcy cases, including this one, in Florida since 2003.<sup>2</sup> Former Debtor commenced this, his most recent case, by filing a voluntary Chapter 13 petition on August 7, 2017.<sup>3</sup> On October 27, 2017, the Chapter 13 Trustee filed an amended motion to dismiss this case with prejudice (“Dismissal Motion”) alleging, among other things, that former Debtor: (1) appeared to be filing multiple bankruptcies solely for the purpose of preventing the County of Volusia from completing a tax deed sale of certain commercial property; (2) had not commenced this case in good faith as it was his third (3rd) bankruptcy filing within the past six (6) years; and (3) had yet to file a confirmable plan.<sup>4</sup>

The evidentiary hearing on the Dismissal Motion took place on October 31 and December 7, 2017. At that hearing, the Court took testimony of former Debtor and heard arguments of former Debtor and

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<sup>2</sup> See *In re Worobec*, Case No.: 03-00634-LMK (Bankr. N.D. Fla.), filed on September 19, 2003, dismissed July 7, 2004; *In re Worobec*, Case No.: 06-10085-KKS (Bankr. N.D. Fla.), filed on June 01, 2006, terminated on October 3, 2011; *In re Worobec*, Case No.: 11-10435-KKS (Bankr. N.D. Fla.), filed on September 14, 2011, terminated on April 14, 2015; *In re Worobec*, Case No.: 16-02222-CCJ (Bankr. M.D. Fla.), filed April on 15, 2016, dismissed December 6, 2016; *In re Worobec*, 17-10189-KKS (Bankr. N.D. Fla.), filed on August 7, 2017, dismissed December 11, 2017.

<sup>3</sup> Doc. 1.

<sup>4</sup> Doc. 111. The Trustee’s Dismissal Motion mirrored, to a large degree, allegations set forth in prior motions filed by creditors. See, e.g., Docs. 30, 34, and 40.

the Chapter 13 Trustee. At the conclusion of the December 2017 hearing, the Court announced its findings: that it was dismissing this case with prejudice and enjoining former Debtor from filing a petition under any Chapter of the Bankruptcy Code for a period of one hundred and eighty (180) days. The Court entered the order granting the Dismissal Motion a few days later, on December 11, 2017.<sup>5</sup>

Meanwhile, the County of Volusia filed a motion seeking prospective stay relief alleging, *inter alia*, the same facts as the Chapter 13 Trustee had alleged in the Dismissal Motion (“Stay Relief Motion”).<sup>6</sup> The Court noticed and conducted a final evidentiary hearing on the Stay Relief Motion on October 31, 2017 at which former Debtor did not appear. On November 21, 2017, the Court issued detailed *Findings of Fact and Conclusion of Law* and a corresponding order granting the County of Volusia prospective *in rem* relief from stay.<sup>7</sup> On December 18, 2017, former Debtor filed a motion for rehearing as to those findings and

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<sup>5</sup> Doc. 138. *Order Granting Chapter 13 Trustee’s Amended Motion to Dismiss* (“Order Dismissing Case”). Doc. 139. The final evidentiary hearing on the Trustee’s Dismissal Motion was held on December 7, 2017. Doc. 138.

<sup>6</sup> Doc. 39. At the October 2017 hearing on that motion, Creditor, Richard III, LLC, made an *ore tenus* motion to join in the Stay Relief Motion, which this Court granted. Doc. 113.

<sup>7</sup> *Findings of Fact and Conclusions of Law in Support of Orders Granting Prospective Stay Relief Pursuant to County of Volusia’s Motion for In Rem Relief from Stay (Doc. 39) and Ore Tenus Joinder in Motion By Creditor, Richard III, LLC*. Doc. 119.; *Order Granting Prospective Stay Relief Pursuant to County of Volusia’s Motion for In Rem Relief From Stay (Doc. 39) And Ore Tenus Joiner In Motion By Creditor, Richard III, LLC*. Doc. 121.

conclusions, which this Court denied by order dated January 26, 2018.<sup>8</sup>

The Chapter 13 Trustee then filed her final report and account.<sup>9</sup>

### DISCUSSION

Former Debtor filed the Reconsideration Motion on January 29, 2019, more than one year after the Order Dismissing Case became final.<sup>10</sup> In the Reconsideration Motion, former Debtor loosely articulates multiple forms of relief: (i) to reopen this Chapter 13 case; (ii) entry of an order vacating the order dismissing this case; (iii) a hearing to determine whether he was in default of payments under the Chapter 13 plan pending as of the dismissal hearing; (iv) a determination of how much he had paid to the Chapter 13 Trustee; and (v) to amend pleadings and objections he had filed prior to dismissal, as well as leave to file responses to the Trustee's and County of Volusia's motions.<sup>11</sup> The Court construes the Reconsideration Motion as one seeking relief pursuant to Rules 59(e) and 60(b), Federal Rules of Civil Procedure.

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<sup>8</sup> Docs. 154 and 163.

<sup>9</sup> Docs. 171. The Court also entered a "final decree," that will be amended or vacated, in that it incorrectly states that the estate had been fully administered when instead the case had been dismissed. Doc. 172.

<sup>10</sup> Docs. 175 and 176.

<sup>11</sup> Doc. 181. It is unclear precisely what pleadings and objections former Debtor wishes to file, and to which motions or other pleadings he now wishes to respond.

## **ANALYSIS**

### **A. The Reconsideration Motion improperly seeks to reopen a case that was not closed but was dismissed with prejudice.**

There is a distinction between reopening a closed case and vacating an order dismissing a case. “[An] order dismissing a bankruptcy [case] is not an order closing it.”<sup>12</sup> As this Court has previously recognized, “[c]losing a case after full administration of a plan . . . creates rights . . . that may very well have to be adjudicated . . . at a later time. But the results of a dismissal have different consequences . . . .”<sup>13</sup>

This case was dismissed for cause on the Chapter 13 Trustee’s Dismissal Motion, filed under 11 U.S.C. § 1307, and with prejudice pursuant to 11 U.S.C. § 109(g). The dismissal of a Chapter 13 case ends the case and the bankruptcy court’s jurisdiction.<sup>14</sup> Because this case was dismissed, there is no case to be “re-opened.”

### **B. The Reconsideration Motion seeks more than one form of relief, in violation of Local Bankruptcy Rule 7007-1.B.**

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<sup>12</sup> *In re Income Property Builders, Inc.*, 699 F.2d 963, 965 (9th Cir. 1982).

<sup>13</sup> *In re Davison*, 186 B.R. 741, 743 (Bankr. N.D. Fla. 1995).

<sup>14</sup> “The legal effects of the dismissal of a chapter 13 case are governed by section 349.” 10 Collier on Bankruptcy P. 1307.09 (16th 2018). This Court was divested of subject matter jurisdiction once it dismissed this case. *See Iannini v. Winnecour*, 487 B.R. 434 (W.D. Pa. 2012).

Local Rule 7007-1.B states: “[e]ach motion shall contain no more than one claim or request for relief unless the prayer is seeking alternative relief provided for in a single section of the Bankruptcy Code or Rules.”<sup>15</sup> In the Reconsideration Motion, former Debtor seeks multiple forms of relief, most of which are not in the alternative. Accordingly, because the Reconsideration Motion violates this Court’s Local Rule 7007-1.B, it is due to be denied.

**C. The Reconsideration Motion is untimely and insufficiently pled.**

Former Debtor cites Fed. R. Civ. P. 60(b)(1)-(6) and 11 U.S.C. § 362(a) in support of the Reconsideration Motion. The only viable remedies available for reconsideration of the Order Dismissing Case are Rules 59(e) and 60(b), Federal Rules of Civil Procedure.<sup>16</sup>

- i. Under Rule 59(e), the Reconsideration Motion is untimely and does not contain sufficient grounds for reconsideration.**

Pursuant to Fed. R. Civ. P. 59(e), as modified by Fed. R. Bankr. P. 9023, a motion to alter or amend a judgment must be filed no later than

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<sup>15</sup> N.D. Fla. LBR 7007-1.B.

<sup>16</sup> Fed. R. Civ. P. 59(e), made applicable by Fed. R. Bankr. P. 9023; Fed. R. Civ. P. 60(b) is made applicable by Fed. R. Bankr. P. 9024.

14 days after the entry of the judgment.<sup>17</sup> Former Debtor filed the Reconsideration Motion on January 29, 2019, four hundred and twelve days (412) after the entry of the Order Dismissing Case, more than a year beyond the time allowed.

Even if the Reconsideration Motion were timely, former Debtor would not be entitled to relief under Fed. R. Civ. P. 59(e). Former Debtor does not recite any material change of law, newly discovered evidence or manifest error of law. Rather, he essentially re-argues facts that were before this Court when it dismissed this case with prejudice and seeks to present “evidence” that has existed, if at all, for many years.

**ii. The Reconsideration Motion does not carry the burden needed for a Rule 60(b) motion.**

“To prevail on a Rule 60(b) motion, the movant must demonstrate: (1) timeliness of the request, (2) exceptional circumstances justifying relief, and (3) the absence of unfair prejudice to the opposing party.”<sup>18</sup> Former Debtor has not demonstrated that his Reconsideration Motion is timely. A Rule 60(b) motion must be filed within a year of the entry of the order complained of.<sup>19</sup>

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<sup>17</sup> Fed. R. Civ. P. 59(e), as modified by Fed. R. Bankr. P. 9023. “This time period is jurisdictional and may not be extended.” 10 Collier on Bankruptcy P. 9023.07 (16th 2018).

<sup>18</sup> *In re Kristan*, 395 B.R. 500, 507 (1st Cir. BAP 2008).

<sup>19</sup> *See* Fed. R. Civ. P. 60(c).

Even assuming former Debtor had timely filed the Reconsideration Motion, his allegations do not carry the burden for a Rule 60(b) motion. Former Debtor reiterates facts that were before this Court when it dismissed this case, re-argues his previously argued positions, and asserts that “new” evidence has been discovered but fails to describe what the “new” evidence is or how it could change this Court’s prior rulings. In addition, former Debtor again insists that the Chapter 13 Trustee did not properly serve the Dismissal Motion, despite the fact that this Court rejected that contention as being without merit when former Debtor first raised it at the hearing in 2017.<sup>20</sup>

**D. Relief against County of Volusia pursuant to Bankruptcy Code Section § 362(a) is not applicable.**

In the Reconsideration Motion, former Debtor appears to seek an order finding that the County of Volusia willfully violated the automatic stay after this case was dismissed. Aside from the fact that this request for relief is not procedurally proper, it is due to be denied for two (2)

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<sup>20</sup> The final hearing on the Dismissal Motion was concluded on December 7, 2017. Doc. 138. At that hearing, the Court noted that the Dismissal Motion was correctly mailed and served on former Debtor at his address of record with this Court and that under Florida law, the Dismissal Motion, not being returned, was deemed received. Further, as previously noted, former Debtor appeared at and participated in that hearing.



fundamental reasons.

First, once this case was dismissed, the automatic stay was vacated, so no action by the County of Volusia post-dismissal could have violated the automatic stay.<sup>21</sup> Secondly, by Order dated November 28, 2017, this Court granted the County of Volusia prospective *in rem* relief from the automatic stay with respect to certain commercial property in Daytona Beach, Florida, pursuant to 11 U.S.C. § 362(d)(4).<sup>22</sup> Accordingly, even had the automatic stay remained in effect, no actions of the County of Volusia as to that property would have constituted a stay violation.

**E. Former Debtor is forewarned that this Court may sanction him if he files additional, unsubstantiated and improper pleadings.**

Pursuant to Fed. R. Bankr. P. 9011(b), bankruptcy courts may impose sanctions against parties who present motions to the court for improper purposes, that are unwarranted by existing law or by nonfrivolous arguments to modify existing law, and for factual assertions or denials thereof that are unsupported by evidence.<sup>23</sup> Pursuant to 11

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<sup>21</sup> 11 U.S.C. § 362(c)(2).

<sup>22</sup> Doc. 121.

<sup>23</sup> Fed. R. Bankr. P. 9011(b). “The purpose of this rule is to deter abusive litigation tactics and streamline the litigation process by lessening the frequency of frivolous claims.” *In re Kristan*, 395 B.R. 500, at 509.

U.S.C. § 105(a), a bankruptcy court is authorized to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”<sup>24</sup> “A Bankruptcy Court may [also] invoke its statutory power of [§] 105(a) to redress Rule 9011 violations, bad faith, and unreasonable, vexatious litigation.”<sup>25</sup>

In previous orders, this Court detailed former Debtor’s history of filing pleadings that contained baseless and unsupported allegations and arguments. For example, in its *Findings of Fact and Conclusions of Law*, this Court found that “by filing this case [former Debtor] has continued his pattern of abusing the bankruptcy process by filing numerous Chapter 13 petitions to avoid the tax sale of the Property, in furtherance of a scheme to hinder and delay the Creditors. In addition to the timing of his filings, [former Debtor’s] conduct throughout his numerous cases is a clear indicator of bad faith . . . .”<sup>26</sup> In the Order denying former

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<sup>24</sup> 11 U.S.C. § 105(a). “There can be little doubt that bankruptcy courts have the inherent power [under 11 U.S.C. § 105(a)] to sanction vexatious conduct presented before the court.” See *In re Gordy*, No. 12-60020, 2013 WL 5488657, at \*4 (Bankr. S.D. GA., Oct. 1, 2013) (quoting *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.)*, 77 F.3d 278, 284 (9th Cir. 1996)).

<sup>25</sup> *In re Zalloum*, Case No. 6:17-bk-02329-KSJ, 2019 WL 965098, at \*9 (Bankr. M.D. Fla. Feb. 25, 2019). See also, *In re Evergreen Sec., Ltd.*, 384 B.R. 882, 931 (Bankr. M.D. Fla. 2008) (finding “[s]anctions may be imposed pursuant to Rule 9011 for both filing pleadings and later advocating positions taken that are without evidentiary support.”).

<sup>26</sup> *Findings of Fact and Conclusions of Law in Support of Orders Granting Prospective Stay Relief Pursuant to County of Volusia’s Motion for In Rem Relief from Stay (Doc. 39) and Ore Tenus Joinder in Motion by Creditor, Richard III, LLC*. Doc. 119.

Debtor's December 2017 motion for rehearing on the *Findings of Fact and Conclusions of Law*, this Court stated: "[t]he majority of the [former] Debtor's arguments are nothing more than regurgitation of arguments that [former] Debtor has previously made . . . ." <sup>27</sup>

In *Schramej v. Jones*, a *pro se* litigant had been a party to fifteen (15) lawsuits in the Tampa Division alone.<sup>28</sup> The defendant in that case filed a sanctions motion to deter the *pro se* plaintiff's actions.<sup>29</sup> The court granted the sanctions motion "[t]o deter future abuse of the civil litigation system" and prohibited the plaintiff from bringing any further civil actions without the benefit of counsel or prior leave of court.<sup>30</sup>

## CONCLUSION

The Reconsideration Motion is but the latest in a series of wasteful, time-consuming and litigious motions filed without supporting factual or legal authority. The Reconsideration Motion is also another attempt to

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<sup>27</sup> *Order Denying Debtor's Motion for Rehearing on Findings of Fact and Conclusion of Law in Support of Orders Granting Prospective Stay Relief Pursuant to County of Volusia for [In] Rem Relied from Stay (Doc. 39) and Ore Tenus in [Sic] Motion by Creditor Richard III, LLC (Doc. 154)*. Doc. 163.

<sup>28</sup> *Schramek v. Jones*, 161 F.R.D. 119 (M.D. Fla. 1995).

<sup>29</sup> *Id.* at 122.

<sup>30</sup> *Id.* at 121.; *See also Matter of Nicholson*, 579 B.R. 640, 649 (Bankr. S.D. Ga. 2017) (holding "Federal Rule of Bankruptcy Procedure 9011 is modeled after and substantially identical to Federal Rule of Civil Procedure 11.") (citing *Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567, 1572 (11th Cir. 1995)).

adversely affect title to property in contravention of this Court's prior rulings.

For the reasons stated, it is ORDERED:

1. The *Amend[sic] Debtor's Verified Motion for Reconsideration Relief[sic] from Order Granting Trustee's Motion to Dismiss Case and Clarification and Reopen the Case*, as amended and supplemented (Docs. 181 & 182), is DENIED. The Objections of the County of Volusia, Richard III, LLC, and the Chapter 13 Trustee are SUSTAINED.

2. If former Debtor files additional unsubstantiated pleadings, he may be declared a "frivolous litigant" and assessed monetary or other sanctions under 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9011.

3. The Clerk is authorized to close this case once this Order becomes final.

DONE and ORDERED on April 19, 2019.



KAREN K. SPECIE  
Chief U.S. Bankruptcy Judge

J. Giffin Chumley, attorney for the County of Volusia, is directed to serve a copy of this Order on interested parties and to file a Proof of Service within three (3) days of entry of this Order.